(14)

No. 888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

GEORGE E. SULLIVAN,
Petitioner,

v.

EUGENE MEYER

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA — AND BRIEF IN SUPPORT.

WILLIAM J. NEALE,

GEORGE E. SULLIVAN,

Counsel for Petitioner.

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To the Chief Justice and Associate Justices of the Supreme Court of the United States:

George E. Sullivan, the petitioner, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered February 29, 1944 (R. 254), their Case No. 8525, affirming a judgment against the petitioner by the District Court of the United States for the District of Columbia in a civil

action for libel brought by petitioner as plaintiff against Eugene Meyer as defendant on April 18, 1942 (R. 1). Issuance of mandate on the judgment of said Court of Appeals was stayed by that Court on March 17, 1944, pending application for certiorari to this Court.

SUMMARY AND SHORT STATEMENT OF MATTER INVOLVED

In January, 1942, after more than six years of special research (R. 16), a carefully documented legal and historical book of 195 pages, "The Road to Victory" (R. 56-251), was completed and published by petitioner, George E. Sullivan, an experienced lawyer of nearly 40 years' active practice (R. 13-14), with known "character" and "motives" certified by the United States Court of Appeals for the District of Columbia of their "own knowledge" to be "of the highest" (67 App. D. C. 228, 229). The scope of the book is tersely and accurately stated in Library of Congress cataloging as follows: (1) World politics, (2) Jewish question, and (3) U. S.—Civilization.

Throughout the book it is manifest that the author believed this Court spoke with authority when it said, in *Frohwerk* v. *United States,* 249 U. S. 204, 208, 63 L. ed. 561, 565:

> "We do not lose our right to condemn either measures or men because the country is at war."

and also when it said, in the much earlier case of Ex parte Milligan, 4 Wall. 2, 120, 18 L. ed. 281, 295:

> "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

Unless this Court spoke with authority in so declaring, petitioner's book demonstrates that intelligent patriotism could not function at all in war time, but would be supplanted by totalitarianism (R. 62-63).

The duty of our armed forces is emphatically stated at the commencement of petitioner's book:

> "America is again in war, a war which is another World War. Every loyal American will do his part on behalf of America in that war. There can be no such thing as a half-way war.
>
> "With our armed forces the motto must be:
>
> " 'TIS NOT TO REASON WHY;
> 'TIS BUT TO DO OR DIE." (R. 61)

It is carefully explained, however, that "our other loyal citizens" have other important duties to perform—those in Congress and others as well—including the duty "to help see to it that none of our armed forces die in vain," and that the office of Commander-in-Chief of our armed forces shall not be unconstitutionally expanded into "Commander of our Congress" or "Commander of our Sovereign People" (R. 61), the first chapter of the book concluding thus:

> "It is the patriotic purpose of this book to

serve up with the utmost fairness and charity the long-suppressed truths which are so vital to be known NOW." (R. 64)

WORLD POLITICS.—According to authentic revelations in the book, too much is regarded today as world politics which is rank gangsterism. The book traces to organized gangsters—rather than to any nation, race or religion as such—the responsibility for hatreds, hypocrisies and wars which are destroying Civilization, with nations controlled from behind the scenes like pawns, and human beings robbed and slaughtered as though possessing no more rights than cattle, the gangsters all the while pretending a purpose to give humanity more freedom, security and happiness. The pretendedly new philosophies or ideologies, used as masks for the outrageous performance, are shown throughout petitioner's book to be merely new adaptations, under new and misleading names, of the ancient gangster concept that government should direct the lives of the people, and thereby enable a ruling group or class to exploit the people,—a concept utterly irreconcilable with Americanism, and which dares not make a frontal attack upon Americanism, but seeks to accomplish its purpose by a campaign of cleverly fused innuendo and prevarication impugning the loyalty of patriotic defenders of Americanism.

JEWISH QUESTION. — The so-called Jewish question is demonstrated in the book to be a screen behind which the worst foes and oppressors of the Jewish people have been hiding for centuries, a special clique or sect of imposters by no means synony-

mous with the Jewish people but formerly known as Pharisees, yet no longer making use of the *name* since ordinary people have been able to learn from their dictionaries that "hypocritical" and "pharisaical" mean the same thing. The book identifies beyond a shadow of a doubt the special clique or sect which is chiefly responsible for intolerances and persecutions heretofore commonly attributed to Jews by non-Jews,—the same clique or sect described, in 1919, by Winston Churchill to the House of Commons as "the most formidable sect in the world," at the same time that he also revealed the "international," rather than Russian, character of the sect, charged by him with having "robbed Russia," at one stroke, of both "peace and victory," in order to launch "a world-wide proletariat revolution" (R. 67-68). Churchill seems to have well understood that the formidable sect alluded to by him was in nowise synonymous with the Jewish people. The fundamental distinction seems also to have been expressly recognized by the Divine Saviour, who loved all men, never deviated from the truth, and minced no words in denouncing the criminal sect of Pharisees for having "made void the Commandment of God" and also "the doctrine of the Pharisees" for making a "child of hell" out of every convert (R. 96). This fundamental distinction is recognized throughout petitioner's book, which exposes authentically the medium through which the doctrine of the Pharisees has been perpetuated through many centuries, such medium being called "Talmud" (R. 80-93). The maintenance of the distinction throughout petitioner's book is apparent from the following:

"It should not be difficult for persons of common sense to realize that the clique that devised the Talmud must constitute a closely-knit band for imposing its rule upon victimized peoples, and is not synonymous with any entire people." (R. 82)

"This background will make manifest that the leading persecutors of the Jews, who are THE REAL ANTI-SEMITES, are a group or band of false and coercive leaders, to whom blood means nothing, and honesty less, who deceive, coerce and mis-use the Jewish people, as well as other peoples. Victimization of Jews is second only to that of non-Jews who are expressly featured in the tenets of the Talmud for merciless victimization." (R. 85-86)

"To claim that such a system should be honored and respected as the Jewish Bible is an insult to intelligence. It is bad enough to have Jews robbed of religion and freedom by means of the Tadmudic system, without calling the means used the victims' Bible. It is also an insult to Almighty God to dignify as a religion a nefarious system which makes of religion a mere pretense or veneer, transgresses with impunity the Commandments of God, and substitutes for love of neighbor in accordance with the universal brotherhood of man organized hate, greed and crime." (R. 91)

"When Talmudism is at an end, Civilization will be re-enthroned. The very air we breathe will be different. A terrible load will be lifted

from the backs of Jews, and an even more terrible load will be lifted from the backs of non-Jews." (R. 100)

"We have had in the past, and we have today, loyal American citizens of Jewish descent willing to sacrifice everything for the American Republic. We must be prepared to safeguard and protect them in the same full measure that we do other loyal American citizens." (R. 108)

"A criminal system cannot create a race. Only God can create a race. The international band or gang, which these International Brigands persist in calling 'Jews,' should really be called 'Talmudists,' to avoid stigmatizing, as members of the band or gang, many persons of Jewish stock who indignantly spurn the Talmudic plot." (R. 243)

"It should also be borne in mind that the 'Talmudists' include many persons not of Jewish stock at all, but who have become enamored of the brigandry features of Talmudism." (R. 243)

"While many of the Jews holding public office in America today appear to be Talmudists, if we judge them by the strange nature of their activities, it is certainly not true that all Jews in America are Talmudists." (R. 244)

"All peoples need to be rescued from the Talmudic grip, Jews as well as non-Jews." (R. 244)

"If we want to preserve our great Republic from disintegration through racial hatreds, we

must never tolerate any super-race pretenses,—Talmudic, Nazi or any other. All super-race concepts involve denial of individual freedom even to the members of the so-called super-race, who are regimented for the purpose of subjugating other peoples." (R. 244)

"HITLER'S PROGRAM A STUDIED PLAGIARISM—A study of the crafty system of the 'formidable sect' for world-conquest, used with such fiendish efficiency to lay Russia low, strongly suggests that Hitler's program is largely a studied plagiarism of the same system, merely re-adapted from a concealed pro-Jewish concept to an openly proclaimed pro-German concept. All super-race pretexts for world conquest reduce the so-called super-race to quasi-enslavement in the process of effecting complete enslavement of other races." (R. 69)

"We are in a terrible war, begun with treacherous and cowardly destruction of American lives and property, and against which the American Republic must defend as RESOLUTELY as though there were no secret, behind-the-scenes, history involving skulking vultures awaiting their harvests in Britain, America, Germany, Italy and Japan. But we must not close our eyes to the existence and plans of such vultures, and succumb to their snare of World Government, no matter how it may be disguised, or how many well-intentioned groups may unwittingly endorse it." (R. 224-225)

"It is absolutely demonstrable that a World Government is as inherently destructive of lib-

> erty and happiness as is a collectivism; in fact, that they are essential to one another to make human enslavement enduring. Free nations are as essential to an enduring Civilization as free individuals." (R. 225)

Petitioner's book deals with authentic and documented matter emanating from sources which cannot be disposed of as mere partisan propaganda, and no partisan propaganda will be found in the book. The presumptuous arrogance and organized intolerance of the Pharisaic-Talmudic imposters, disguising themselves as constituting the Jewish people, are shown to have been continuous for ages, dating back to the sixth pre-Christian century. An authoritative essay "The Talmud" by Arsene Darmesteter, recently re-printed by The Jewish Publication Society of America, describes the Talmud and Judaism as "one and the same," with "Hebraism" completely ended in the "transformation" (R. 80). The essay defines the Talmud as "Pharisaic formalism" dating back to "the Captivity," and serving as "a rallying point for the dispersed of Israel," a "system of observance having relation to every moment of life," reducing the dispersed of Israel "to never-ending slavery—slavery accepted freely and with joy, for this sacred, a thousand times blessed yoke is the condition of happiness" (R. 80-81). The writer of such essay, Darmesteter, is expressly recognized as an outstanding authority by Chief Rabbi Hertz in his foreword to a very recent (1935) edition of the Talmud, comprising 8 volumes, one set of which is in the Library of Congress (R. 81), the foreword to such recent edition tracing the Talmud back to "the sixth pre-

Christian Century" and to "the feverish activity of the Pharisaic schools" (R. 83). Five exact quotations from such recent authentic edition of the Talmud, reproduced in petitioner's book as demonstrating that the Talmudic tenets are "brazen vehicles for organized despoilment" (R. 86) must be carefully read and pondered, as follows:

> "Where a suit arises between an Israelite and a heathen, if you can justify the former according to the laws of Israel, justify him and say: 'This is OUR law'; so also if you can justify him by the laws of the heathens justify him and say (to the other party): 'This is YOUR law'; but if this cannot be done, we use subterfuges to circumvent him." (R. 86)
>
> "And with all lost things of thy brother's, it is to your brother that you make restoration, but you need not make restoration to a heathen." (R. 86)
>
> "With respect to robbery—if one stole or robbed or (seized) a beautiful woman, or (committed) similar offences, if (these were perpetrated) by one Cuthean against another, (the theft, etc.) must not be kept, and likewise (the theft) of an Israelite by a Cuthean, but that of a Cuthean by an Israelite may be retained." ("Cuthean (Samaritan) was here substituted by the censor for the original goy (heathen)," says Footnote). (R. 86)
>
> "For murder, whether of a Cuthean by a Cuthean, or of an Israelite by a Cuthean, pun-

ishment is incurred; but of a Cuthean by an Israelite, there is no death penalty." (R. 86)

"It also applies to the withholding of a laborer's wage. One Cuthean from another, or a Cuthean from an Israelite is forbidden, but an Israelite from a Cuthean is permitted." (R. 86)

It is revealed in such late edition of the Talmud that the recognized name of the Talmudic head is "Nasi" (R. 97), a fact which had been earlier revealed in the Jewish Encyclopedia (R. 103) which also disclosed that Lionel de Rothschild was "for a long time President of the Great Synagogue" and "held intimate relations with Disraeli" (R. 103) whose character Sidonia in Disraeli's book "Coningsby" was "an idealized portrait" of Lionel de Rothschild (R. 103). In Disraeli's said book, published in 1844,—4 years before the Communist Manifesto,—Rothschild, styled "Sidonia," was called "a man without a country," whose only human interest was "Intellect" (R. 104). In Disraeli's said book, it was asserted:

"That mighty revolution which is at this moment preparing in Germany, and which will be, in fact, a second and greater Reformation, and of which so little is as yet known in England, is entirely developing under the auspices of Jews." (R. 76)

"The secret history of the world was his (Sidonia's) pastime. His great pleasure was to contrast the hidden motive, with the public pretext, of transactions." (R. 104)

> "No penal laws, no physical force, can effect that a superior race should be absorbed by an inferior." (R. 105)

> "The world is governed by very different personages from what is imagined by those who are not behind the scenes." (R. 105)

Before the first Zionist Congress of 1897, a book published by its head, Theodor Herzl, titled "The Jewish State," declared:

> "When we sink, we become a revolutionary proletariat, the subordinate officers of the revolutionary party; when we rise, there rises also our terrible power of the purse." (R. 115)

After Bolshevism had laid Russia low, the *Jewish Chronicle* of London boasted (1919) that Bolshevism is "consonant" at many points "with the finest ideals of Judaism" (R. 76). The *American Hebrew* magazine followed (1920) with the assertion that Jewish "mind and heart" were tending "to promote in other countries" what had been done in Russia (R. 78). Four years later (1924), Maurice Samuel, a lecturer under the auspices of the Jewish Welfare Board, published a book "You Gentiles" asserting:

> "We Jews, we, the destroyers, will remain the destroyers forever. Nothing that you will do will meet our needs and demands. We will forever destroy because we need a world of our own, a God-world, which it is not in your nature to build." (R. 94)

Eight years thereafter (1932), Maurice Samuel published another book "Jews on Approval," admitting the hypocrisy of the "God-world" pretext:

> "It is absurd to say that the Jews believed in the return to Palestine because God told them to do so. Since they invented their own God, they must also have invented his commands." (R. 95)

Still more recently (March, 1938), the American Jewish journal *Opinion* (Rabbi Stephen S. Wise, editor) branded as "A Jewish Traitor" a particular Rabbi for having become an "apostle of Christian-Jewish good-will" (R. 128-129), and termed the Rabbi's Christian-Jewish good-will "anti-Jewishness" (R. 129),—according to which false definition Christianity is essentially anti-Jewish.

U. S. — CIVILIZATION. — The book features throughout the importance to the American people, and to the world, of restoring "the true functioning of the American Republic," and putting an end to illegal and destructive innovations, including especially those imported by the so-called New Deal. It shows wherein the campaign pledges of 1932 were really executed in reverse (R. 161-164). It shows the persistence of the New Deal, in defiance of the Constitution and the Supreme Court, and asks a number of pertinent questions:

> "Did not the N.R.A. and the A.A.A. bureaucracies directly retard recovery? Were not both of them held by the Supreme Court to be unconstitutional? Have not other bureaucracies

been instituted, still further retarding recovery? How can American enterprise survive under endless burdens?

"Why was the well-known apostle of scarcity, Henry A. Wallace, given free rein to destroy crops and hogs, and to pay persons for non-raising of crops and hogs? In 1936, Wallace published a book 'Whose Constitution.' One of the obvious purposes was to belittle the very Constitution which he, as Secretary of Agriculture, had taken an oath to support. Some of his slurring assertions were:

> " 'These checks and balances have been of such nature that we have found it necessary to throw them overboard in every time of great emergency.'
>
> " 'Our system employed by any great mature nation in Europe would result in very rapid disaster.' " (R. 231)

"If the American people had been better acquainted with Mr. Wallace's strange ideas, his election as Vice President would hardly have been possible. Why did Roosevelt favor such a running mate unless their views harmonized?" (R. 231)

Petitioner's book further exposed Roosevelt's flaunting of the Constitution, as well as his oath of office, inherent in his official letter of July 5, 1935 (shortly after the Supreme Court's invalidation of the N.R.A.), telling a Congressional Committee (relative to then pending legislation):

> "I hope your Committee will not permit doubts as to constitutionality, however reasonable, to block the suggested legislation." (R. 160-161).

The book also exposed Roosevelt's boast early in 1936 of having "built up new instruments of public power" which he admitted might "provide shackles for the liberties of the people" if in other than New Deal hands (R. 164), such boast constituting an obvious defiance of the Supreme Court's invalidation of the N.R.A. After also reviewing the strange records of Stalin and Churchill, the book asked this pertinent question:

> "Without convicting Roosevelt of willful malfeasance in office, are we not obliged to oppose the committing of the destiny of the American Republic WHOLLY to a Stalin, a Churchill, or a Roosevelt, singly, or to the three jointly? Our Republic is in urgent need, as never before, of an alert and active Congress, and an alert and outspoken Sovereign People!" (R. 232)

The contrast between New Dealism and Americanism is tersely stated near the end of petitioner's book:

> "By maintaining America's independent destiny and Constitutional American Liberty, we will set an example worthy of adoption in other parts of the world. This is the only way in which America can help to create a FREE WORLD. Neither Freedom nor Christianity

> can be implanted anywhere by aggression and force!" (R. 250)

THE LIBEL OF PETITIONER.—On April 11, 1942, less than three months after the publication of petitioner's book "The Road to Victory," Eugene Meyer's newspaper, *The Washington Post*, carried on its front page a leading article regarding a "NAZI PROBE," in which article "Attorney George E. Sullivan" was described as being——

> "himself the author of a defeatist, anti-Jewish book" (R. 5).

No mention was made of the title of any book, nor any discussion or treatment of any definite and precise subject-matter attempted. The article contented itself with casting odium upon "Attorney George E. Sullivan" in his personal, legal and authorship capacities by a listing of him, under a heading "NAZI PROBE," as being——

> "*himself* the author of a defeatist, anti-Jewish book."

The inherent innuendos of disloyalty produced by such wanton stigmatization require no argument. The cleverly fused innuendo and prevarication cannot be excused by any unbiased and reasonably well-informed mind, because there is nothing in the domain of truth to warrant any deduction or even belief that any part of the innuendo or prevarication was well-founded. The published article was as unambiguously defamatory as petitioner's book was un-

ambiguously patriotic and in defense of both Jews and non-Jews from intolerance and persecution.

TRIAL OF LIBEL ACTION IN DISTRICT COURT.—Petitioner's complaint in libel sought compensatory and punitive damages because of the combined prevarication and innuendo of disloyalty (R. 2). Meyer admitted the publication, but claimed (1) that the article was fair comment upon petitioner's book "The Road to Victory" which was not even named in the article, and (2) that the article was true (R. 9); but in each so-called defense Meyer disclaimed altogether innuendos of disloyalty (R. 9). At the trial, Justice Goldsborough overruled petitioner's objection to three members of the jury who were Federal employees and subject to dismissal at any time by the New Deal Administration (R. 10-12). Petitioner contended that disqualification was imputed as matter of law under the "special and exceptional case" doctrine carefully preserved in *United States v. Wood*, 299 U. S. 123, 81 L. ed. 78, no matter what such a Federal employee might say as to lack of fear of dismissal, because an admission of such fear would invite possible, if not certain, dismissal. Notwithstanding the unambiguous nature of both Meyer's article and petitioner's book, showing the article to be an utterly unwarranted use of innuendo and prevarication to assassinate petitioner's character, the District Court granted, over petitioner's objection (R. 43), the following instruction requested by Meyer:

> "The jury are instructed that the truth is an absolute defense in an action of libel, and if they

> find that 'The Road to Victory' was in fact a defeatist, anti-Jewish book, as those words would be understood by ordinary readers of *The Washington Post*, their verdict must be for the defendant." (R. 31)

Leeway was thus granted to a jury, with three members owing their jobs to continued favorable consideration by the New Deal Administration, to give the article and the book, respectively, such meaning as they might determine, including the meaning claimed by Meyer in his pleading as to the article that it did not impugn petitioner's loyalty, notwithstanding the Court itself had definitely determined and declared to counsel (out of the jury's hearing) that the article unquestionably did have the effect of impugning petitioner's loyalty, the Court's declaration being:

> "We are right in the midst of a war and everyone is intensely concerned about it. Now, at this particular time, to say that a man wrote a defeatist book is almost like calling a man a traitor; guilty to be punished for treason. It doesn't seem to me it is a question of anything except as to whether or not it is a defeatist book. In other words, suppose he said he wrote a worthless book. That simply means that he didn't use good judgment in writing the book, but it does not separate him from the rest of society. It doesn't point the finger of condemnation, universal condemnation, on him, like the word 'defeatist,' when we are in the midst of a war." (R. 45)

The Court should have rejected the defense of truth, as well as the defense of so-called fair comment, because Meyer's denial made in each plea as to the innuendo of disloyalty necessarily collapsed with the Court's unavoidable finding that the article did unquestionably impugn petitioner's loyalty, no basis for impugning which was pleaded by Meyer. It is fundamental that a plea of justification must be as broad and complete as the subject-matter required to be met, or it cannot prevail. Even if the jury had possessed no biased or disqualified members, the American maxim of "Equal Justice Under Law" required the Court to make its own determination effective, instead of granting leave to a jury to determine otherwise as they might see fit. The Court was no more warranted in granting such leave to a jury than was Pilate warranted in setting aside his own judgment regarding the Divine Saviour and leaving the decision elsewhere. Meyer dared not contend in Court that there was any real basis for impugning petitioner's loyalty as the published article had plainly done, and which impugning he has never corrected with the general public, yet he sought and obtained an instruction which would enable the jury to defeat petitioner by qualified construction and interpretation of a perfectly unambiguous defamation.

ACTION OF UNITED STATES COURT OF APPEALS.—In lieu of an opinion such as is contemplated by law, from which the true nature of the case could be understood, the United States Court of Appeals for the District of Columbia used language as general as the original libel itself, the opinion saying: (1) that the contents of the book sufficiently

support the jury's verdict, and (2) that the published article was "at least a reasonable opinion" entitling Meyer to a directed verdict on the issue of fair comment (R. 253). This is such a plain miscarriage of justice, in both form and substance, as to strongly suggest the need for the giving to that Court by this Court of some standards governing libel cases, with particular reference to avoidance of misapplication of the doctrine of fair comment. Back in 1936, said Court of Appeals (Justice Stephens speaking) delivered an illuminating opinion, *Washington Times Co.* v. *Bonner*, 66 App. D. C. 280, 86 F. 2d 836, explaining and upholding the sound majority rule governing fair comment supported by a Federal decision written by Judge Taft when a Circuit Judge and by a State decision written by Judge Holmes when on the Supreme Court of Massachusetts, namely, "that the right of fair comment does not extend to misstatements of fact," and also explaining the unsound minority rule to the contrary supported by a Kansas decision as the leading case for it. In the following year, 1937, said Court of Appeals rendered another opinion (written by another Justice, since deceased) which opinion departed entirely from the sound doctrine of the Bonner case, and undertook to absolve Eugene Meyer of all liability for an obviously injurious libel, in the face of obvious distortion of facts admitted by Meyer's own demurrer, notwithstanding which admission the exonerating opinion unwarrantedly stated that Meyer had gone no further than "legitimate comment or criticism," yet lauded the other party's high motives. *Sullivan* v. *Meyer*, 67 App. D. C. 228, 91 F. 2d 301. In a still more recent case, *Sweeney* v. *Patterson*, 76 U. S. App. D. C. 23,

128 F. 2d 318, decided in 1942, (opinion by Justice Edgerton, of Kansas), the Kansas decision aforesaid, *Coleman* v. *MacLennan*, 78 Kan. 711, which is the leading case upholding the unsound minority rule, was cited in support of attempted qualification of the sound majority rule approved in the earlier Bonner case, yet the Court of Appeals took occasion to explain that it had misapprehended the matter before it in the earlier *Sullivan* v. *Meyer* case, saying:

> "His (Sullivan's) complaint stated that he had asked the Board of Education (1) to drop from the school curriculum a book which he said gave a false picture of Russian communism and (2) to give the pupils the truth about the matter instead. It alleged that the defendant's newspaper had so distorted the facts as to make it appear that the plaintiff sought to prevent pupils from knowing anything about Russia. The defendant demurred. Since his article represented Sullivan as an advocate of ignorance, and the whole matter as 'farcical,' it was obviously injurious to Sullivan's reputation." (p. 25)

The Court added:

> "Though the Court characterized the article as criticism or comment, the opinion and the record show that the complaint charged the defendant with injurious distortion of the facts. If, as was necessarily assumed on demurrer, the complaint was true, the defendant did distort the facts." (p. 25)

However, instead of declaring that earlier *Sullivan* v. *Meyer* case to be overruled as improvident, the Court of Appeals proceeded to utilize it as supporting an attempted adoption of a portion of the minority rule in behalf of freedom to make injurious distortion of facts without liability therefor. It is evident from the opinion in *Sweeney* v. *Patterson, supra,* that the United States Court of Appeals for the District of Columbia does not seem to grasp that, instead of the law of libel curtailing freedom of speech, it is a necessary safeguard for such freedom to prevent the perversion of the same into licentiousness. The generosity shown to Meyer in the previous *Sullivan* v. *Meyer* case was obviously an unfortunate contribution to licentiousness, because any libel "obviously injurious to Sullivan's reputation" and based upon "injurious distortion of facts" could not be otherwise than libel *per se*. It is particularly unfortunate that such generosity was shown a person defaming a patriotic defender of Americanism while the defamer was lauding Russian communism as "the most dramatic experiment in government of, for, and by the people in modern history" (record in earlier *Sullivan* v. *Meyer* case). The decision of said Court of Appeals in the present *Sullivan* v. *Meyer* case appears to be an even greater and more unfortunate contribution to licentiousness, of which Meyer is the beneficiary. Said Court can hardly be warranted in holding that the jury had a right to sanction, as well-founded, an impugning of petitioner's loyalty, which was inherent in the published article, when Meyer himself disclaimed such contention in his pleadings and, in addition, put his writer Stokes on the stand to disavow such a claim (R. 26), nor can the plain

truth be ignored that the article (whether so intended or not) did impugn petitioner's loyalty, for which Meyer ought not to escape payment of compensatory damages. To say that it was "at least a reasonable opinion" on the part of Meyer for which he can make petitioner suffer can be reconciled only with the unsound minority doctrine of Kansas, from which State the writer of the recent opinion of said Court of Appeals hails. The law of libel at least in the Federal Courts must not shift in accord with personal tendencies of changing Justices. Standards are needed, and, when established, they should remain so until changed by the legislature. Otherwise, law becomes capricious, and "Equal Justice under Law" a mockery.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, Chap. 229, Sec. 1 (43 Stat. 938; 28 U. S. C. A., Sec. 347). The judgment of the United States Court of Appeals for the District of Columbia was entered February 29, 1944 (R. 254).

QUESTIONS PRESENTED

1. Whether fair comment extends to misstatement or distortion of fact.

2. Whether a Court may justifiably leave it to a jury to interpret as non-libelous, matter which is as unambiguous as it is libelous.

3. Whether a Court may justifiably leave it to a jury to treat as improper or objectionable a legal

and historical book which every legal mind should know to be entirely proper and legitimate.

4. Whether a judicial opinion may justifiably be utilized to give new life to libelous matter, instead of stating the facts of the case showing that the libelous innuendo was disclaimed by the publisher in Court, though never retracted in the publisher's columns.

5. Whether justification in libel can be effectual unless as broad and complete as the libel itself.

6. Whether the right to a fair and impartial jury is violated when the subject-matter under consideration is a book strongly criticizing the New Deal plan or program, and the author's objections are overruled to service on the jury of persons who are Federal employees in a New Deal administration and have no tenure of office.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

(1) The United States Court of Appeals for the District of Columbia has so far departed from the accepted and usual course of judicial proceedings, and also so far sanctioned such a departure by the lower Court, as to call for an exercise of this Court's power of supervision.

(2) The United States Court of Appeals for the District of Columbia is attempting to change the long-settled rule in the Federal Courts and in most of the State Courts as to the scope of the right of fair comment.

(3) The United States Court of Appeals for the District of Columbia has not given proper effect to

the decision of this Court in *Frohwerk* v. *United States*, 249 U. S. 204, 208, 63 L. ed. 561, 565, upholding the right of the citizen to condemn either measures or men in wartime.

(4) The United States Court of Appeals for the District of Columbia has not given proper effect to the decision of this Court in *United States* v. *Wood*, 299 U. S. 123, 81 L. ed. 78, relative to disqualification of jurors under the "special and exceptional case" doctrine expressly alluded to in that decision to ensure a fair and impartial jury.

WHEREFORE, it is respectfully prayed that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and send to this Court for its review and determination, a full and complete transcript of the record and proceedings in the case at bar, their number 8525, and that the judgment of said United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper.

And your petitioner will ever pray.

GEORGE E. SULLIVAN,
Petitioner.

By
WILLIAM J. NEALE,
GEORGE E. SULLIVAN,
Counsel for Petitioner.